

# **Reference: RGL 85-06**

## **Subject: SPECIAL CONDITIONS-STREAM FLOW**

### **Title: PERMIT CONDITIONING FOR MINIMUM IN-STREAM FLOWS**

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**Originator: DAEN-CWO-N**

**Description: STATES HAVE PRIMARY AUTHORITY FOR ALLOCATING WATER QUANTITIES. DE WILL NOT NORMALLY CONDITION A PERMIT TO REQUIRE IN-STREAM FLOWS NOT AGREED TO BY THE STATE.**

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1. This guidance letter modifies and replaces RGL 82-5, which expired on 31 December 1984.
2. The primary responsibility for allocating water quantities in those states where designated state agencies are empowered by law to allocate water quantities rests with state governments. Traditionally, state law governs the allocation of water in the 17 western states (i.e., Washington, Oregon, California, Idaho, Nevada, Montana, Wyoming, Utah, Colorado, Arkansas, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas).
3. The public interest review criteria generally require district engineers to issue Corps permits where all local and state permits have been issued unless there are overriding factors of national concern (see 33 CFR 320.4(j)(4)). Water quantity considerations, even in those states not covered by water quantity allocation laws, are normally considered to be factors of state rather than national responsibility.
4. When a conflict arises between state water quantity allocations and minimum in-stream flows for purposes of maintaining viable aquatic habitat, district engineers will normally consider that the public interest is represented by state water allocation rights or preferences. Consequently, any project alternative which supersedes, abrogates, or otherwise impairs those quantities is normally not a practicable alternative from the Federal regulatory perspective.
5. When a district engineer believes a permit should be conditioned or denied for a situation where minimum in-stream flows are required by Federal statute or substantial national interest (e.g., endangered species, navigation, Clean Water Act compliance, or other applicable Federal law) and there is a conflict between a state water quantity allocations or preferences and the minimum in-stream flows, he will forward to OCE a

copy of the public notice, the proposed Record of Decision or Statement of Findings for the decision, and a brief summary of the issues. If within 10 working days of the date of the district engineer's letter to OCE further guidance has not been received, the district engineer will proceed with his proposed action.

FOR THE CHIEF OF ENGINEERS: